IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 87 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

PRADIP J. KINARIWALA

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Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 18/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Revenue, Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred following question of law for opinion of this Court for Assessment Year 1984-85 :

"Whether, the Appellate Tribunal is right in law and on facts in deleting the income of Rs. 38,741/- from the income of the assessee which was included under Explanation 2A to section 64(1)(iii) of the Act ?"

2. In his return of income, the assessee had declared share of profit from M/s. Kinariwala RJR Industries. In the return it was mentioned by the assessee that 50% of 10% share of profit was transferred to Pradip J. Kinariwala Family Trust. Further in the return of income, income accrued to Smt. Kaminiben and minor Lopaben had been declared under section 64(1)(iii) of the Act. A revised return of income was filed, wherein income of Rs. 38,741/-, which was shown as having accrued to minor Lopaben was excluded in view of CIT (Appeals)'s order in case of the assessee. The I.T.O. included share transferred by the assessee to the trust in his income and clubbed the income accrued to Smt. Kaminiben - wife of the assessee as well as Lopaben- minor daughter of the assessee under section 64(1)(iii) of the Act. In appeal, CIT (A) directed the I.T.O. not to treat share transferred by the assessee to the trust as his income and club the income of the assessee's wife and minor daughter with the income of the assessee. The Tribunal has upheld the decision of C.I.T.(Appeals).

3. We have heard the learned counsel for the Revenue. The trust is a separate unit in the eye of law. The record does not indicate that either the wife of the assessee or minor daughter of the assessee were partners in M/s. Kinariwala RJR Industries. The assessee had transferred his share to the trust and not to the beneficiary of the trust. Therefore, in our view, the Tribunal was right in law in deleting the income of Rs. 38,741/- from the income of the assessee which was included under Explanation 2A to section 64(1)(iii) of the Act. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue. The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal,J.)

( M.S.Shah, J.)

(patel)